

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 393 of 1992****For Approval and Signature:****HONOURABLE MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO.LTD. - Appellant(s)**Versus**

**MINOR DHUPIBEN H JOSHI, THROUGH FATHER'S BROTHER VINODRAY
P. & 5 - Defendant(s)**

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
MR SK VORA for Defendant(s) : 1 - 4.
MR YATIN SONI for Defendant(s) : 5 - 6.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT**Date : 25/09/2007****ORAL JUDGMENT**

This Appeal has been preferred by the Oriental
Insurance Co. ltd. (hereinafter referred to as, "the

Insurance Company") under Section 110-D of the Motor Vehicles Act, 1939, (hereinafter referred to as "**the Act**") against the judgment and award dated 25th June, 1991 passed by the learned Motor Accident Claims Tribunal, Rajkot(hereinafter referred to as, "**the Tribunal**")in Claim Case No.623/1984.

The respondents nos. 1,2,3 and 4 lodged the above referred Claim Case No. 623/1984 for compensation in the sum of Rs.5 lakhs, for dependency benefits on account of the death of one Harkant Popatlal Joshi who died on 29th July, 1984 in a road accident at Rajkot on account of negligent driving of an Auto-rickshaw bearing registration No.GTE 2038, of which respondent no.5 was the driver and respondent no.6 was the owner.

It is not in dispute that at the time of the accident, the deceased Harkant Popatlal Joshi was driving a Moped bearing registration No. GTM 9106. On account of negligence of the Auto-rickshaw driver, the Auto-rickshaw collided with the said Moped causing injuries to the said Harkant Popatlal Joshi.

The Tribunal attributed 75% of the negligence to the Auto-rickshaw driver and 25% of the negligence to the deceased. Accordingly, the Tribunal awarded a total compensation in the sum of Rs.3,46,500/- to the claimants.

The Insurance Company does not dispute the factum of the accident, the quantum of negligence attributed to each of the drivers, the right of the claimants to receive the compensation or the quantum of compensation. The only dispute that the Insurance Company has raised is that the Insurance Company cannot be held to be liable to pay the entire amount of compensation.

Mr. Mehta has submitted that under the prevalent law and in view of the terms and conditions of the Insurance policy, the liability of the Insurance Company for compensation to a third party was restricted to Rs.50,000/-. Mr. Mehta has submitted that the Tribunal has erred in construing the relevant provisions of law and in holding that in absence of express provision, the Insurance Company

was liable for the whole of the amount of compensation. In support of his submissions, Mr. Mehta has relied upon Section 95 of the Motor Vehicles Act, 1939 and the judgment of the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Jugar Kishore and others** (AIR 1988 SC 719). He has also relied upon the Insurance policy (Exh. 18) and the terms and conditions contained therein. He has submitted that under the said policy, the Insurance Company had agreed to indemnify the insured which the insurer shall legally be liable to pay.

Section 95 of the Act provides for requirements of policies and limits of liabilities. The said Section enjoins the authorised insurer to insure a person or classes of person. Sub-section(2) of the said Section 95 provides for the limits upto which the policy of insurance shall cover the liability incurred in respect of any one accident. Clause-(b) thereof provides for a passenger vehicle in which the passengers are carried for hire or reward. Sub-clause(i) thereof reads that **"in respect of persons**

other than passengers carried for hire or reward, a limit of fifty thousand rupees in all”.

In the matter of **National Insurance Co. Ltd.** (supra), the Hon'ble Supreme Court has considered the scope and ambit of the aforesaid Section 95(2)(b)(i) of the Act in light of the terms and conditions of the Insurance policy. Like in the present case, in that case also the Insurance Company's liability was confined to “such amount as is necessary to meet the requirements of Motor Vehicles Act, 1939”. The Hon'ble Supreme Court held that **“Comprehensive insurance of the vehicle and payment of higher payment on this score, however, do not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub-section(2) of Section 95 of the Act. For this purpose, a specific agreement has to be arrived at between the owner and insurance company and separate premium has to be paid on the amount of liability undertaking by the insurance company in this behalf.”**

In the present case also, as recorded hereinabove, the Insurance Company did not take up liability in addition to the statutory liability nor did it charge extra premium for the same. In my view, therefore, Mr. Mehta is right in contending that no liability beyond the statutory sum of Rs.50,000/- can be imposed upon the Insurance Company. The Tribunal however, has erred in construing aforesaid Clause(b) of Section 95(2) of the Motor Vehicles Act,1939. The Tribunal has observed that **"But unfortunately, the statute is silent for third parties like suvega driver, the deceased. However, the intention of legislation can never be so when a person who met with an accident with a public service vehicle, statutory liability is 50,000 rupees and a person who meets with an accident with a goods vehicles, the statutory liability is Rs. 1,50,000/-."**

Evidently, the Tribunal has tried to strike the balance amongst the provisions which the Tribunal found to be unreasonable. Reasonable or not, the Tribunal was required to decide the matter in accordance with law and not according to what was

reasonable to the Tribunal. When the statute has made a specific provision in respect of persons other than passengers, the Tribunal was not right in holding that the Act was silent and in deviating from the same on the touch-stone of reasonableness.

As discussed hereinabove, the Insurance Company cannot be held to be liable for an amount more than the liability imposed by the statute(Rs.50,000/- in the present case).

For the aforesaid reasons, the Appeal is allowed. The impugned judgment and award dated 25th June, 1991 passed by the Motor Accident Claims Tribunal, Rajkot in Claim Case No. 623/1984 is modified to the extent that the liability of the Insurance Company to pay the compensation to the claimants shall be confined to Rs. 50,000/-(the statutory limit imposed by the Act). The parties will bear their own costs.

If the amount deposited with the Tribunal is not yet disbursed, such amount which is refundable to the

appellant Insurance Company with the interest earned on such amount, be remitted to the appellant Insurance Company.

Registry shall issue the decree forthwith.

(Ms. R.M.DOSHIT, J.)

(raghu)